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Supreme Court, U.S.
FILED

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

James E. Shrock

Petitioner

v.

United States

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

James E. Shrock proper party
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35 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the court of appeals rule outside the subject matter of 28 U.S.C. 1330 when it issued its judgments entered pursuant to 28 U.S.C. 1331?

2. Did the court of appeals violate due process of law under the Fifth Amendment of the Constitution of United States?

3. Did the court of appeals violate Indiana's long arm statute?

4. Did the court of appeals violate the Tenth Amendment of the Constitution of United States?

TABLE OF CONTENTS

TABLE OF CASES i

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 7

REASONS FOR GRANTING WRIT 8

THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN TOTAL DISREGARD OF A GOVERNING ACT OF CONGRESS, IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND IN CONFLICT WITH OTHER FEDERAL COURTS OF APPEALS ON THE SAME MATTER 8

THE LOWER COURTS HOLDING THAT 28 U.S.C. 1331 JURISDICTION OVER PETITIONER MAY BE ASSERTED IN THIS CASE IS IN CONFLICT WITH FSIA, THE DUE PROCESS CLAUSE, THE TENTH AMENDMENT AND APPLICABLE DECISIONS OF THIS COURT 14

CONSLUSION 17

TABLE OF CASES

Asahi Metal Industries Co. v. Superior Court, __ U.S. __, 107 S.Ct. 1026, 1033 (1987) 16

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985) 16

Hanson v. Denkla, 357 U.S. 235 (1958) 16

International Shoe Company v. Washington, 326 U.S. 310, 316 (1945) 15

Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. ____, 98 L.Ed.2d 415, 424 (1987)) 12, 15

Osborn v President, Directors & Co. of Bank, 9 Wheat (22 U.S.) 823 (1824) 13

Shaffer v Heitner 97 S.Ct. at 2582, 433 U.S. at 207 15

Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 487 (1983) 9, 13, 14, 15

World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 298 (1980) 16

Generally ..... passim

§ 1330 ..... 8, 10, 11

§ 1331..... 8, 12, 14, 16, 17

§ 1602..... 8, 9

§ 1604 .....10, 12, 14

§ 1605 .....10, 12, 15

§ 1605 (a) (1) 10

§ 1605 (a)(2) 10

§ 1605(a)(3) 10

§ 1605(a)(4) 10

§ 1605(a)(5) 10

§ 1607 ..... 10, 12

§ 1608 ..... 8, 10, 12, 14

§2680(c). 8

§ 1391(f) 10

26 U.S.C. 7421(a)), 7422 ..... 8, 11

MISCELLANEOUS

Restatement of Foreign Relations Law of the United States (Revised) (Tent. Draft No. 2, March 1981) § 451 May 1986)("Revised Restatment") 11

Rule 12b F.R. Civ. P. 8

Fifth Amendment 7, 8, 16

Tenth Amendment 7, 8, 15, 16

H.R. Rep. No. 94-1487, 94th Cong., 2d Sess., 12, reprinted in [1976] U.S. Code Cong. & Admin. News 6604, 6610 (1975) 11, 12, 13, 15

Indiana's long arm statute 12

NO._____

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James E. Shrock

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United States

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

OPINIONS BELOW

United States district court's order, filed, September 27, 1996, appears in Appendix A-1, infra.

Court of appeals order, filed July 22, 1996, appears in Appendix at A-7, infra.

Court of appeals mandate issued September 12, 1996, appears in Appendix at A-12, infra.

JURISDICTION

The district court in this matter denied Petitioner's complaint. This Court's jurisdiction is invoked under Title 28 U.S.C. 1254(1)

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the Constitution of the United States of America provides in pertinent part:

> No person shall be ... deprived of ... liberty, or property, without due process of law; ...

2. The Tenth Amendment to the Constitution of the United States of America provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

3. The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. §§ 1330, 1602-1611 (1976), reads in relevant part as follows:

§ 1330. Actions against foreign states

> (a) The district court shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections

1605-1607 of this title or under any applicable international agreement.

§ 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§ 1605 General exceptions to the jurisdictional immunity of a foreign state.

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver.

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon a act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

§ 1331 Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§ 1340 Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

§ 2680(c) Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to —

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any

officer of customs or excise or any other law enforcement officer.

26 U.S.C. § 7421(a). Anti Injunction Act
"No suit for the purposes of restraining the assessment or collection of any tax shall be maintained in any court by any person."

26 U.S.C. § 7422 (a) No suit prior to filing claim for refund.—No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

State of Indiana Long Arm Rule 4.4
Service upon persons in actions for acts done in this state or having an effect in this state
(A) Acts serving as a basis for jurisdiction. Any person or organization that is a non resident of this state, a resident of this state who has left the state, or a person whose residence is unknown, submits to the jurisdiction of the courts of this state as to any action arising form the following acts committed by him or his agent:

(1) doing any business in this state;

(2) causing personal injury or property damage by an act or omission done within this state;
(3) causing personal injury or property damage in this state by an occurrence, act or omission done outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, of services used, consumed, or rendered in this state;
(4) having supplied or contracted to supply services rendered or to be rendered or goods or materials furnished or to be furnished in this state;
(5) owning, using, or possessing any real property or a;n interest in real property within this state; or
(6) contracting to insure or act as surety for or on behalf of any person, property or risk located within this state at the time the contract was made;
(7) living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in the state.

(B) Manner of service. A person subject to the jurisdiction of the courts of this state under this rule may be served with summons:

(1) As provided by Rules 4.1 (service on individuals), 4.5 (service upon resident who cannot be found or served within the state), 4.6

(service upon organizations), 4.9 (in rem actions); or

(2) The person shall be deemed to have appointed the Secretary of State as his agent upon whom service of summons may be made as provided in Rule 4.10.

(C) More convenient forum. Jurisdiction under this rule is subject to the power of the court to order the litigation to be held elsewhere under such reasonable conditions as the court in its discretion may determine to be just.

In the exercise of that discretion the court may appropriately consider such factors as:

(1) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;

(2) Convenience to the parties and witnesses of the trial in this state in any alternative forum;

(3) Differences in conflict of law rules applicable in this state and in the alternative forum; or

(4) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

STATEMENT OF THE CASE

Petitioner sued respondent in its jure gestionis capacity for confiscation of his property in violation of the minimum contacts standard as it relates to the Due Process Clause of the Fifth Amendment, and the State of Indiana's long arm statute. Additionally, petitioner claims violation of his Tenth Amendment rights to his property.

Specifically, petitioner's complaint alleges that his property in the from of money is being confiscated to pay alleged due and owing income taxes. Petitioner sought damages in excess of $50,000 and to vest the District Court exclusively under the terms of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1330(a)(b), 1602-1608.

Respondent moved to dismiss under Rule 12b F.R. Civ. P. for lack of jurisdiction and failure to state a claim, and the district court dismissed the suit. The district court concluded that petitioner's application of the FSIA is inapplicable and proceeded to invoke 28 U.S.C. 1331 and sovereign immunity under 28 U.S.C. §2680(c). The district court rejected petitioner's motion for reconsideration and proceeded to impose sanctions. The district court did not address petitioner's Fifth Amendment Due Process Claims with its minimum contacts standard, and whether petitioner purposefully gave up his Tenth Amendment rights.

The panel proceeded to invoke the Anti Injunction Act, 26 U.S.C. § 7421(a) which prohibits suits in the collection of taxes, 26 U.S.C. 7422, 7422, failure to exhaust administrative remedies, and sovereign immunity.

Finally, the panel issued a show cause why sanctions should not be imposed. There were no hearings and no transcript.

REASONS FOR GRANTING WRIT

THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN TOTAL DISREGARD OF A GOVERNING ACT OF CONGRESS, IN

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT, AND IN CONFLICT WITH OTHER FEDERAL COURTS OF APPEALS ON THE SAME MATTER

Contrary to the panel's holding below, the FSIA is an all-encompassing statute which sets forth both the substantive and procedural standards that govern *all* suits that may be brought against foreign states in state and federal courts in the United States. Although the statute provides that judicial, rather than executive, authorities should determine claims of foreign states to sovereign immunity from suit, it mandates that they must do so *"in conformity with the principles set forth in this chapter"* (§ 1602, emphasis added). The principles prescribed by Congress in the FSIA embody the "restrictive" theory of sovereign immunity—*Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 487 (1983)—under which foreign states are subject to suit only "insofar as their commercial activities are concerned," *i.e.*, for activities *jure gestionis* (§ 1602)). With one exception noted below, non-commercial, governmental or sovereign activities of foreign states—activities *jure imperii*—cannot be made subject of suit in the court of the United States as a matter of established international law which Congress expressly incorporated into the FSIA.

To achieve these goals, the FSIA broadly provides that federal district courts "shall have original jurisdiction without regard to amount in controversy of any non-jury civil action against a foreign state ... as to any claim ... with respect to which a foreign state is not entitled to immunity"

under the terms of the statute or any applicable international agreement (§ 1330(a)). The FSIA announces detailed standards for determining when immunity is to be accorded. The fundamental principle on which the statute is structured is that foreign states are "*immune from the jurisdiction of the courts of the United States* and of the States" unless an exception is found within the statute or applicable international agreements (§ 1604, emphasis added). Statutory exceptions from this general grant of immunity exist when immunity has been waived (§ 1605(a)(1)), when the claim arises from specified commercial activities of the sovereign state (§ 1605(a)(2)), when rights in property taken in violation of international law are at issue (§ 1605(a)(3)), when rights in specified property situated in the United States are involved (§ 1605(a)(4)), and when claims based on tortious injuries to persons or property occurring within the United States are in question (§ 1605(a)(5)).

In addition, the FSIA sets forth detailed procedural rules for suits against foreign states, including special rules governing venue (§ 1391(f)), jury trial (§ 1330(a)), service of process (§ 1608)), answers to complaints (§ 1608)), counterclaims (§ 1607)), and default judgments (§ 1608(e)).

This comprehensive Congressional scheme makes it patent that the Act was intended to be the sole jurisdictional source for suits against foreign sovereigns.[1] Moreover, its

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[1] Every Circuit that has addressed the issue agrees that the FSIA provides the exclusive basis for federal jurisdiction in civil actions against foreign states and their agencies. See, City of Englewood v. Socialist People's Lybian Jamahiriya, 773 F.2d 31, 35 (3d Cir. 1985); Williams v. Shipping Corp. of India, 653 F.2d 875, 881 (4th Cir. 1981, cert. denied, 455 U.S. 982 (1982); Goar v. Compania Peruana de

legislative history makes it abundantly clear that the statute was expressly "*intended to preempt any other state or Federal law* (excluding applicable international agreements) for according immunity to foreign sovereigns ..." H.R. Rep. No. 94-1487, 94th Cong., 2d Sess., 12, *reprinted in* [1976] U.S. Code Cong. & Admin. News 6604, 6610 (1975)). This balance, completeness and structural integrity of the FSIA conclusively refutes the lower courts invoking state citizenship, U.S. citizenship, the Anti Injunction Act, sovereign immunity, administrative remedies, and no statutory basis.

The lower courts' view that 26 U.S.C. 7421(a)), 7422, and sovereign immunity applies is a total misapplication of the FSIA and in particular 28 U.S.C. 1330(a)(b). The restrictive theory of immunity as it developed in customary international law and as it was adopted by Congress in the FSIA, distinguishes between "governmental or sovereign" activities engaged in by the states *jure (imperii)* and their private law activities—activities of the kind that may also be carried on by private persons (*jure gestionis*). *Restatement of Foreign Relations Law of the United States (Revised)* (Tent. Draft No. 2, March 1981) § 451 May 1986)("*Revised Restatment*"). It is the essence of the restrictive theory to "restrict" or limit the

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Vapores, 688 F.2d 417, 421 (5th Cir. 1982); Frolova v. Union of Soviet Socialist Republics, 761 F.2d 370, 372 (7th Cir. 1985); Yugoexport, Inc. v. Thi Airways Intern. Ltd., 749 F.2d 1373, 1375 (9th Cir. 1984), cert. denied, 471 U.S. 1101 (1985); Jackson v. People's Republic of China, 794 F.2d 1490, 1493 (11th Cir. 1986); MacArthur Area Citizens Associatioa v. Republic of Peru, 809 F.2d 918, 919 (D.C. Cir. 1987).

jurisdictional immunity of foreign states to acts *jure imperii* and to deny immunity for acts jure jestionis.

Service of process upon United States in its jure gestionis capacity was not instituted pursuant to §1331, but to the service provisions built into the FSIA, i.e., 28 U.S.C. §1608. That service provision, however, cannot be carried beyond what Congress intended. *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. ____, 98 L.Ed.2d 415, 424 (1987)). Since the lower courts have relied on sovereign immunity and the Anti injunction Act as a jurisdictional predicate for its decision, and since those claims have no built-in service provision, the lower courts cannot create their own long arm as a means of acquiring jurisdiction via 28 U.S.C. § 1331. See *Omni Capital Int'l* Id. The State of Indiana's long arm statute provides that any assertion of personal jurisdiction must conform to the due process clause and the minimum contacts standard.

The lower courts' view is also plainly refuted by the explicit provision of § 1604 which provides in language admitting of no ambiguity that *a foreign state is immune from jurisdiction of federal and state courts*, subject only to the set of exceptions specified in §§ 1605 and 1607, and express jurisdictional provisions in treaties or international agreements to which the United States is a party which may provide a different rule. *See also* H.R. Rep. No. 94-1407, supra, [1975] U.S. Code Cong. & Admin. News at 6616. "Section 1604 would be the only basis under which a foreign state could claim immunity from the jurisdiction of

any Federal or State Court in the United States" (emphasis added).

In *Verlinden B.V. v. Central Bank of Nigeria*, supra, this Court painstakingly reviewed the provisions of the FSIA and its legislative history and concluded that the statute "contains comprehensive set of legal standards governing claims of immunity in *every civil action against a foreign state* ..." (461 U.S. at 488. emphasis added). Elsewhere in *Verlinden*, the Court emphasized that the FSIA was "clearly intended to govern *all actions* against foreign sovereigns (461 U.S. at 491 n. 16 emphasis added).[2] Further, this Court in *Verlinden*, referring to H.R. 94-1487 stated: the desire to insure "*our citizens* ... access to the courts." [Emphasis in original], not by restricting the class of potential petitioners. See also H.R. at 6605. Moreover, the *Verlinden* Court reaffirmed *Osborn v President, Directors & Co. of Bank*, 9 Wheat (22 U.S.) 823 (1824) by stating: "The right of the plaintiff to sue, cannot depend on the defense which the defendant may choose to set up."

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[2] Since the enactment of the FSIA, six different panels of the court of appeals have uniformly held that in actions against foreign states the Act preempts all other jurisdictional statutes.
Proyecjin de Venezuela v. Banco Industrial, 760 F.2d 390, 392 (2d Cir. 1985); Canadian Overseas v. Compania de Acero, 727 F.2d 274, 277 (2d Cir. 1984); O'Connell Machinery Co. v. M.V. "Americana", 743 F.2d 115, 116 (2d Cir. 1984) cert denied, 496 U.S. 1086 (1984); Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 307-09 (2d Cir. 1981), cert. denied, 454 U.S. 1148 (2d Cir. 1982); Ruggiero v. Compania Peruana de Vapores, 639 F.2d 872, 873, 879 (2d Cir. 1981); Carney v. National Oil Corp. 592 F.2d 673, 676 (2d Cir. 1979)

The lower courts erred in disregarding the express provisions of § 1604 of the FSIA, the statute's legislative history and this court's binding precedent in *Verlinden.*

The courts holding that § 1331 provides a defense where the FSIA expressly forbids it would make a nullity of the FSIA, and merits review by this Court.

THE LOWER COURTS HOLDING THAT 28 U.S.C. 1331 JURISDICTION OVER PETITIONER MAY BE ASSERTED IN THIS CASE IS IN CONFLICT WITH FSIA, THE DUE PROCESS CLAUSE, THE TENTH AMENDMENT AND APPLICABLE DECISIONS OF THIS COURT

The court of appeals reaches the untenable conclusion "that citizens of the states are not also citizens of the United States. There is thus no merit to Shrock's contention that the United States is not a foreign state as that term is used in either § 1330 or the FSIA" is a miscarrage of justice. (App. 8, 9) From this analysis the court refused to consider whether respondent is acting in its jure gestionis or jure imperii capacity towards petitioner and whether petitioner purposely created an economic nexus with respondent.

Because of its disregard of the FSIA's provisions dealing with subject matter jurisdiction the courts also disregarded the Act's built-in provisions governing assertions of personal jurisdiction against foreign states. This Court summarized the statutory scheme in *Verlinden*, supra, as follows:

> Under the Act, however, both statutory subject-matter jurisdiction (otherwise known as "competence") and

> personal jurisdiction turn on application of the substantive provisions of the Act. Under § 1330(a), federal district courts are provided subject-matter jurisdiction if a foreign state is "not entitled to immunity either under sections 1605-1607 ... or under any applicable international agreement"; § 1330(b) provides personal jurisdiction whenever subject-matter jurisdiction exists under subsection (a) and service of process has been made under 28 U.S.C. § 1608. Thus, if none of the exceptions to sovereign immunity set forth in the Act applies, the District Court lacks both statutory subject-matter and personal jurisdiction. [461 U.S. at 485 n.5.

Clearly, therefore, §1605's itemization of non-immune transactions is a prescription of "the necessary contacts which must exist before our courts can exercise personal jurisdiction." H.R. Rep. No. 94-1487, supra, [1975] U.S. Code Cong. & Admin. News at 6612. Here the lower courts ignored personal jurisdiction, § 1605 and the Due Process Clause and proceeded to disregard the Tenth Amendment and the State of Indiana's long arm statute. This unamious Court stated in *Omni Capital Int'l v. Rudolf Wolff & Co.* supra, the courts cannot fashion their own long arm.

It is settled constitutional doctrine in this country that "due process requires ... that in order to subject a defendant to a judgment in personam, quasi in rem, or in rem, *Shaffer v Heitner* 97 S.Ct. at 2582, 433 U.S. at 207, he has certain minimum contacts with [the forum]." *International Shoe Company v. Washington*, 326 U.S. 310, 316 (1945).[3] In

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[3] In enacting the FSIA, Congress expressly incorporated the Due Process principles enunicated in International Shoe, H.R. Rep. 94—1497 [1975] U.S. Code Cong. & Admin. News at 6612.

Hanson v. Denkla, 357 U.S. 235 (1958), made it even more explicit that it would have to be Shrock who creates the contact with respondent's forum, that is pivotal to a Due Process analysis:

> The unilateral activity of those who claim some relationship with a nonresident ... cannot satisfy the requirement of contact with the forum State ... [I]t is essential that in each that there be some act by which [Shrock] purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

357 U.S. at 253. See also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985); *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). In *Asahi Metal Industries Co. v. Superior Court*, __ U.S. __, 107 S.Ct. 1026, 1033 (1987), the Court reemphasized that, for Due Process purposes, the affiliating connection between the forum state and the nonresident ... "must come about by an action of [Shrock] purposefully directed towards the forum state".

The record here is barren of any affiliating contacts by the petitioner with the United States in its jure gestionis capacity in relation to the claims asserted by United States.

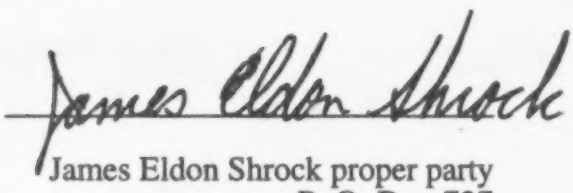
In sum, there is a total absence of affiliating contacts by the petitioner with the United States in its jure gestionis capacity which would permit the assertion under § 1331 to violate this Court's consistent and long-established constitutional holding under the Fifth Amendment's Due Process Clause and the Tenth Amendment.

The Court should therefore review the assertion of § 1331 jurisdiction over petitioner that has been mandated by the judgments of the courts below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



James Eldon Shrock proper party
P. O. Box 727
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

James E. Shrock
Plaintiff

JUDGMENT IN A CIVIL CASE

Civil No. **1: 95 CV 205**

v

United States of America
Defendant

Decision by Court. This action came before the Court, the issues having been determined and a decision having been rendered,

IT IS ORDERED AND ADJUDGED that judgment is entered for the Defendant United States of America and against Plaintiff James E. Shrock.

September 27, 1995

STEPHEN R. LUDWIG
clerk

/s/_____
(By) deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

James E. Shrock
Plaintiff

Civil No. **1: 95 CV 205**

v

United States
Defendant

ORDER

This matter is before the court on the United States' motion to dismiss. For the following reasons, the motion will be granted.

Discussion

On June 29, 1995, plaintiff, James E. Shrock ("Shrock") filed a "Complaint for Damages and Motion for Injunction". Attached as Exhibit A to Shrock's Complaint is a document entitled "Affidavit of Declaration of Commercial Standing Under the National Laws of Commerce to Correct, Pursuant to 5 U.S.C.§ 552(a), Inaccurate, Irrelevant, Untimely, Incomplete, and False or Presumed Information Contained in Federal Records About James E. Shrock." This affidavit essentially states that Shrock believes that he is not subject to federal income tax as he is not "subject to United States local commercial jurisdiction under the commerce clause ..."

The United States has filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b) (1) (lack of jurisdiction) and 12(b) (6) (failure to state a claim). With respect to its Rule 12(b)(1) motion, the United States argues

that all of the jurisdictional bases relied upon by Shrock are inapplicable to the present case. Shrock has relied on 28 U.S.C. § 1330(a), which provides that district courts have original jurisdiction over actions against foreign states as defined in 28 U.S.C. § 1603(a). This is a United States District Court, and the United States is not a foreign state with respect to its own court. Thus, this court does not have jurisdiction under § 1330(a).

Shrock has also relied on § 1391(f), which is merely a venue provision and does not give this court jurisdiction over the United States. Shrock next relies on 28 U.S.C. § 1605(a), which provides exception to the immunity of foreign states. As noted earlier, the United States is not a foreign state; thus, § 1605(a) is inapplicable. Finally, Shrock has relied on several provisions of the United States Constitution (Article I and III, and Amendment 5) for jurisdiction. Clearly, this court has the power under Constitution to hear cases arising under the laws of the United States; however, Shrock has failed to identify a statute which would give this court jurisdiction to hear this case.

In an abundance of caution, this court will next consider whether Shrock's cause of action falls under the more traditional jurisdictional statutes, 28 U.S.C. §§ 1340 and 1331. Section 1340 grants the district courts original jurisdiction of any civil action arising under any act of Congress providing for internal revenue. This jurisdiction extends to civil actions arising under the Internal Revenue laws; thus, the suit must be based on some cause of action

which the Internal Revenue Code recognizes and allows the plaintiff to bring. Young v Internal Revenue Service, 596 F.Supp 141 (N.D. Ind. 1984). As in Young, it is clear that this case does not arise under the Internal Revenue Code. Shrock does not seek to enforce any provision of the Code or to pursue a statutory remedy under the Code. Consequently, it is clear that § 1340 does not confer jurisdiction on this court.

Section 1331 is the general "federal question" jurisdictional statute. Assuming that Shrock has stated a "federal question", and jurisdiction is proper under § 1331, Shrock could not recover damages unless he can prevail under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, or under the principles of Bivens v Six Unknown Agents, 91 S.Ct. 1999 (1971). As in Young, any claim asserted by Shrock under the Federal Tort Claims act would fail on principles of sovereign immunity because the Federal Tort Claims Act specifically excludes "any claim arising in respect to the assessment or collection of any tax or customs duty ..." 28 U.S.C. § 2680(c). With respect to a possible Bivens action, the courts have repeatedly refused to recognize a Bivens action against the United States for the collection and assessment of taxes. See Seibert v Baptist, 594 F.2d 423, 429-32 (5th Cir. 1979); Young, supra.

Accordingly, this court finds that jurisdiction is lacking over this cause of action and the United States' motion to dismiss will be grated on this basis.

The United States has also argued that Shrock has failed to state a claim, as courts have repeatedly rejected

arguments such as Shrock's which have been concocted out of thin air in an attempt to avoid the duty of paying federal taxes. This court agrees with the United States on this point also, and finds that Shrock has failed to state a claim for which relief may be granted.

The United States has also requested that this court impose sanctions on Shrock, pursuant to Rule 11, for filing this baseless lawsuit. As the United States points out, this is not the first time this court has had to expend valuable time and resources on meritless claims presented by Shrock. In Cause No. 91-125, Shrock v Internal Revenue Service, Shrock advanced meritless claims which he finally dismissed after the United States filed a motion to dismiss and Magistrate Judge Cosbey warned him of the Rule 11 consequences of pursuing a meritless case. Later, in Cause No. 92-91, Shrock v Internal Revenue Service, this court dismissed with prejudiced a similar case in which Shrock argued he was exempt from paying federal income tax because he had published his won personal "Declaration of Independence."

It appears to this court that sanction may very well be appropriate in this case. Fed. R. Civ. Pro. 11(c) (1) (B).

CONCLUSION

For all the foregoing reasons, the United States' motion to dismiss is hereby GRANTED.

Further, Shrock is hereby ORDERED TO SHOW CAUSE, within 20 days of the date of this order, as to why he should not be sanctioned, pursuant to Rule 11 of the

Federal Rules of Civil Procedure, for filing the present action.

Enter: September 27, 1995.

/s/_____

William C. Lee, Judge
United States District Court

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 27, 1996*

Decided July 22, 1996

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

James E. Shrock Plaintiff Appellant	Appeal from the United States District Court for the Northern
Appeal No.95-3927	District of Indiana, Fort Wayne Division
v.	
United States Defendant/Appellee	No. 95 C 205 William C. Lee Judge

ORDER

James Shrock filed this suit seeking damages from the United States for all federal income taxes collected from him

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* After an examination of the brief and the record, we have concluded that oral argument is uncecessary in this case; accordingly, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a); Cir. R. 34(f).

since 1990 and an injunction prohibiting the further collection of federal taxes. The district court dismissed the suit for lack of subject matter jurisdiction and imposed sanctions against him pursuant to Rule 11 of the Federal Rules of Civil Procedure. This appeal followed.

A federal court may entertain a suit only where a statute specifically confers jurisdiction upon the court. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986); *Abercrombie v. Office of Comptroller of Currency*, 833 F.2d 672, 674 (7th Cir. 1987). Shrock maintains that as a citizen of Indiana he is not a citizen of the United States, that the United States is therefore a "foreign state." and that accordingly, § 1330 of the Judicial Code confers jurisdiction on the district court to hear his claim. See 28 U.S.C. § 1330(a). Shrock further claims that the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§1602-1611, waives the United States sovereign immunity with respect to his claims.

These arguments are patently frivolous. We have repeatedly rejected the claim that citizens of the states of the United States are not also citizens of the United States. See for example, *Harrell v. United States,* 13 F.3d 232, 235 (7th Cir. 1993); *United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993); *United States v. Sloan*, 939 F.2d 499, 500-01 (7th Cir. 1991) Cert. denied, 502 U.S. 1060 (1992); *United States v. Schmeider*, 910 F.2d 1569, 1570 (7th Cir. 1990). There is thus no merit to Shrock's contention that

the United States is a "foreign state" as that term is used in either § 1330 or the FSIA.

According, the district court properly dismissed Shrock's claim for lack of subject matter jurisdiction. To the extent that Shrock sought an injunction, the Anti-Injunction Act, 26 U.S.C. § 7421(a), affirmatively "withdraw[s] jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes." *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962), except under exceptional circumstances not applicable here.[1]

To the extent that Shrock sought damages against the government based on its collection of taxes from him, the United States has not waived its sovereign immunity, see 28

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[1] Those circumstances are, first, that "under the most liberal view of the law and facts, the government could not ultimately prevail]in collecting the challenged taxes]." and second, that the "plaintiff will sustain irreparable injury for which there is no adequate remedy at law." *Rappaport v. United States*, 583 F.2d 298, 302 (7th Cir. 1978) citations omitted).

Shrock has not made either showing in this case; he merely asserted summarily in his complaint that he was "likely to prevail on the merits of the underlying action" and that he would "suffer irreparable harm if the motion [was] not granted."

As discussed above, Shrock's claims rest on the universally rejected argument that as a "sovereign Citizen" he is not subject to federal taxation, and thus it is virtually certain that the government will prevail. Moreover, Shrock has provided nothing to substantiate his assertion that he will suffer irreparable harm if the injunction is not granted.

U.S.C.A. § 2680(c), and thus, the district court properly dismissed for lack of jurisdiction, *Jones v. United States*, 16 F.3d 979, 981 (8th Cir. 1994); see also *Amwest Sur. Ins. Co. v. United States*, 28 F.3d 690, 694 (7th Cir. 1994).

Finally, to the extent that Shrock sought a refund under for taxes paid or withheld, 26 U.S.C. § 7422, the district court lacked jurisdiction to hear his claim because there is not indication in the record that Shrock has exhausted the administrative remedies required by § 7422, *Goulding v. United States*, 929

F.2d 329, 331 (7th Cir. 1991), cert. denied, 506 U.S. 865 (1992).

Thus, there was no statutory basis under which the district court could hear Shrock's, and the district court properly dismissed his suit for lack of subject matter jurisdiction.

Turning now to the Rule 11 sanctions the district court imposed on Shrock, the court imposed $5,000 in sanctions: $2,500 to be paid to the government as attorney's fees incurred in defending against the suit, and $2,500 to be paid to the clerk of the district court for having wasted the court's resources. The setting of sanctions is within the discretion of the district court, and "Rule 11 permits an award of those expenses directly caused by a baseless filing, including attorneys' fees in defending against the filing." *Lorentzen v. Anderson Pest Control*, 64 F.3d 327, 330 (7th Cir.

1995.) Shrock does not challenge the district court's imposition of sanctions against him, and accordingly, any challenge to those sanctions is waived, Fed. R. App. P. 28(a)(4); *Doherty v. City of Chicago*, 75 F.3d 318, 324 (7th Cir. 1996); *United States v Bell*, 936 F.2d 337, 343 (7th Cir. 1991).

Finally, pursuant to Rule 38 of the Federal Rules of Appellate Procedure and Circuit Rule 38, the United States has moved for sanctions against Shrock for filing a frivolous appeal. Accordingly, Shrock is given fourteen days from the issuance of this order to show cause as to why he should not be sanctioned. The United States shall have seven days from the filing of Shrock's response in which it may reply, if it so chooses. We caution Mr. Shrock that his response is an opportunity only to argue why this court should not impose sanctions against him, and is not an opportunity to re-argue the merits of his case.

AFFIRMED

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604
NOTICE OF ISSUANCE OF MANDATE

DATE: September 13, 1996

TO: Stephen R. Ludwig
United States District Court
Northern District of Indiana
Room 1108
Fort Wayne Division
212 Federal Building
Fort Wayne, IN 46802

FROM: Thomas F. Strubble

RE: 95-3927
Shrock, James E. v. USA
95 C 205, William C. Lee, Judge

Herewith is the mandate of this court in this appeal, along with the Bill of
Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

[ ] No record filed
[x] Original record on appeal consisting of:

ENCLOSED:	TO BE RETURNED AT LATER DATE:
[1] Volumes of pleadings	[ ]
[ ] Loose pleadings	[ ]
[ ] Volumes of transcripts	[ ]
[ ] Volumes of exhibits	[ ]
[ ] Volumes of depositions	[ ]
[ ] In Camera material	[ ]
[ ] Other _____	[ ]

_____

Record being retained for use in Appeal No. _____ [ ]

Copies of this notice sent to: Counsel of record
[ ] United States Marshall
[ ] United States Probation Office

NOTE TO COUNSEL:
If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these document on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date: _____
(1071-061395)

_____
Deputy Clerk, U.S. District Court